

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Ryffel Family Big Timber Limited Partnership

CASE 43B-0817-R-2022

43B 197456-00

43B 197457-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

These claims each appeared in the Preliminary Decree with the following issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

The issue remarks were not addressed and resolved through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. The January 12, 2023 Court Minutes, Order Entering Default, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimant and the Bozeman Regional Office, Montana Department of Natural Resources and Conservation ["DNRC"]. The April 20, 2023 DNRC Memorandum states that the claimant did not contact the DNRC, reports that the claimed reservoir is visible on a 1951 aerial photograph but the dam appears washed out, and recommends removal of the issue remark. Nothing was filed by the claimant.

The April 24, 2023 Second Order Entering Default and Order Setting Filing Deadline To Show Cause Why These Claims Should Not Be Amended Pursuant To Section 85-2-248(9), MCA. The July 24, 2023 response filed by the claimant includes a statement co-signed by Ranch Managers Michael Joecks and Joe Leyo, and a statement signed by Dan Plaggemeyer. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the

elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The claimant's July 24, 2023 response states:

We have been asked to provide details and documentation on the historical existence of the reservoir referenced in this water right. Aerial photos provided previously by Thomas Sandau of the DNRC have confirmed the existence of the reservoir in 1951 images but in these photos no water is visible in the reservoir.

The historical use of this reservoir has been to collect the runoff from this tributary of Tenmile Creek to accumulate a large enough volume of water to use for irrigation. The typical flow of this tributary is not large enough to irrigate directly out of. The most significant water collection would come at the time of spring runoff and the collected water would be used for summer irrigation. Because of the low typical flow of the tributary, it would not be practical to make use of this water right without the existence of the reservoir. The reservoir is an essential part of the water right and it appears that it has been so since the original establishment of the water right. These facts are based on our personal observations and conversation with neighbors including Dan Plaggemeyer who has personal knowledge of this property's irrigation history.

The dam retaining the water in this reservoir has been blown out a number of times over the years and has then been rebuilt. Also, this is a seasonal reservoir that would generally only have significant water in it during the spring and early summer. This is likely why the limited aerial photographs we were able to locate do not show water in the reservoir.

The dam and reservoir should not be removed from the point of diversion description on either claim. The issue remarks should be removed as addressed and resolved.

2. The Preliminary Decree also includes the following notice remarks on the abstract of claim 43B 197456-00:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS

SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

POINT OF DIVERSION, SOURCE NAME, AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The Preliminary Decree also includes the following notice remarks on the abstract of claim 43B 197457-00:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The information provided by the claimant and the DNRC is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Ryffel Family Big Timber Limited Partnership
3113 S University Dr, Suite 600
Fort Worth, TX 76109

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 197456-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RYFFEL FAMILY BIG TIMBER LIMITED PARTNERSHIP
3113 S UNIVERSITY DR, SUITE 600
FORT WORTH, TX 76109

Priority Date: JANUARY 11, 1928

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 537.68 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 57.20

Source Name: SPRING, UNNAMED TRIBUTARY OF TENMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	18	3N	14E	SWEET GRASS

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: H. PLAGGEMEYER DITCH (OLD JOHNSON DITCH)

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWSW	18	3N	14E	SWEET GRASS

Diversion to Reservoir: DIVERSION # 1

Period of Use: MARCH 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.00		N2NESW	18	3N	14E	SWEET GRASS
2	4.10		NWNWSE	18	3N	14E	SWEET GRASS
3	9.00		E2SENW	18	3N	14E	SWEET GRASS
4	29.10		SWNE	18	3N	14E	SWEET GRASS
5	7.00		S2NENW	18	3N	14E	SWEET GRASS

Total: 57.20

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

197456-00

197457-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 197457-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RYFFEL FAMILY BIG TIMBER LIMITED PARTNERSHIP
3113 S UNIVERSITY DR, SUITE 600
FORT WORTH, TX 76109

Priority Date: OCTOBER 5, 1898

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 537.68 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 57.20

Source Name: SPRING, UNNAMED TRIBUTARY OF TENMILE CREEK

Source Type: SURFACE WATER

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<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	18	3N	14E	SWEET GRASS

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: H. PLAGGEMEYER DITCH (OLD JOHNSON DITCH)

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWSW	18	3N	14E	SWEET GRASS

Diversion to Reservoir: DIVERSION # 1

Period of Use: MARCH 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.10		N2NESW	18	3N	14E	SWEET GRASS
2	4.00		NWNWSE	18	3N	14E	SWEET GRASS
3	45.10		N2	18	3N	14E	SWEET GRASS

Total: 57.20

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

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